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INJUNCTIONS IN LABOR CONTROVERSIES.

The suit for an injunction recently brought by the federal government against the Railroad Shopcrafts Union has awakened renewed interest in the question as to what acts a labor union engaged in a strike may be enjoined from doing. As far as suits in the federal courts are concerned, the Clayton Act and the very luminous opinion delivered by Chief Justice Taft in *American Steel Foundries v. Tri-City Cent. Trades Council*, 42 Sup. Ct. Rep. 72, have placed a well defined limit upon the powers of the court in granting such an injunction. In the bill filed by Attorney General Dougherty in the suit against the Shopcrafts Union he asked for an injunction that would far transcend this limit. If such an injunction as he petitioned for were granted it would prohibit any peaceful persuasion in any form, in any place, under any circumstances, to induce any employee of a railroad company to leave his employment, or to induce any one not to enter into the employ of such a company; and its practical effect would be to preclude the union in assembly from discussing those matters that are most essential to its own protection, or the protection of its members, and from taking any effective action against unjust dealings or measures on the part of the railroad companies. Thus by striking at the very foundation upon which it is built and depriving it of its one essential weapon, the injunction, if it could be enforced, would destroy the union itself. Now the purpose of the Clayton Act was to prevent this very thing. What led to its enactment was the tendency of some of the federal courts to use an injunction for purposes for which it was never intended; to make it an aggressive not a defensive process; a sword not a shield. This is made very clear by the terms of the act and by its interpretation in the case previously referred to.

Section 20 of the Act (Comp. St. sec. 1243d), provides:

"That no restraining order or injunction shall be granted by any court of the United States, or a judge or the judges

thereof, in any case between an employer and employees, or between employers and employees, or between employees, or between persons employed and persons seeking employment, involving, or growing out of, a dispute concerning terms or conditions of employment, unless necessary to prevent irreparable injury to property, or to a property right, of the party making the application, for which injury there is no adequate remedy at law, and such property or property right must be described with particularity in the application, which must be in writing and sworn to by the applicant or by his agent or attorney. And no such restraining order or injunction shall prohibit any person or persons, whether singly or in concert, from terminating any relation of employment, or from ceasing to perform any work or labor, or from recommending, advising, or persuading others by peaceful means to do so; or from attending at any place where any such person or persons may lawfully be, for the purpose of peacefully obtaining or communicating information, or from peacefully persuading any person to work or to abstain from working; or from ceasing to patronize or to employ any party to such dispute, or from recommending, advising, or persuading others by peaceful and lawful means so to do; or from paying or giving to, or withholding from, any person engaged in such dispute, any strike benefits or other moneys or things of value; or from peaceably assembling in a lawful manner, and for lawful purposes; or from doing any act or thing which might lawfully be done in the absence of such dispute by any party thereto; nor shall any of the acts specified in this paragraph be considered or held to be violations of any law of the United States."

In the opinion interpreting these provisions Chief Justice Taft said:

"It is clear that Congress wished to forbid the use by the federal courts of their equity arm to prevent peaceable persuasion by employees, discharged or expectant, in promotion of their side of the dispute, and to secure them against judicial restraint in obtaining or communicating information in any place where they might lawfully be. This introduces no new principle into the equity jurisprudence of those courts. It is merely declaratory of what was the best practice always. Congress thought it wise to stabilize this rule of action and render it uniform. * * * Labor unions are recognized by the Clayton Act as legal when instituted

for mutual help and lawfully carrying out their legitimate objects. They have long been thus recognized by the courts. They were organized out of the necessities of the situation. A single employee was helpless in dealing with an employer. He was dependent ordinarily on his daily wage for the maintenance of himself and family. If the employer refused to pay him the wages that he thought fair, he was nevertheless unable to leave the employ and to resist arbitrary and unfair treatment. Union was essential to give laborers opportunity to deal on equality with their employer. They united to exert influence upon him and to leave him in a body in order by his inconvenience to induce him to make better terms with them. They were withholding their labor of economic value to make him pay what they thought it was worth. The right to combine for such a lawful purpose has in many years not been denied by any court. The strike became a lawful instrument in a lawful economic struggle of competition between employer and employees as to the share or division between them of the joint product of labor and capital. To render this combination at all effective, employees must make their combination extend beyond one shop. It is helpful to have as many as may be in the same trade in the same community united, because in the competition between employers they are bound to be affected by the standard of wages of their trade in the neighborhood. Therefore, they may use all lawful propaganda to enlarge their membership and especially among those whose labor at lower wages will injure their whole guild. It is impossible to hold such persuasion and propaganda without more, to be without excuse and malicious."

There could not be a clearer recognition of the right of laborers to organize and combine for lawful purposes, and of the fact that such purposes include the exertion of influence upon the employer by leaving "him in a body in order by his inconvenience to induce him to make better terms with them," in other words to organize a strike, and in pursuance of the purposes of the strike to use lawful propaganda and peaceful persuasion to induce other employees to join it. What propaganda is lawful and what persuasion peaceful? Chief Justice Taft thus answers the question:

"The object and problem of Congress in section 20 (of the Clayton Act), and indeed of courts of equity before its enactment, was to reconcile the rights of the employer in

his business and in the access of his employees to his place of business and egress therefrom without intimidation or obstruction, on the one hand, and the right of the employees, recent or expectant, to use peaceable and lawful means to induce present employees and would-be employees to join their ranks, on the other. If in their attempts at persuasion or communication with those whom they would enlist with them, those of the labor side adopt methods which however lawful in their announced purpose inevitably lead to intimidation and obstruction, then it is the court's duty which the terms of section 20 do not modify, so to limit what the propagandists do as to time, manner and place as shall prevent infractions of the law and violations of the right of the employees, and of the employer for whom they wish to work. * * * How far may men go in persuasion and communication and still not violate the right of those whom they would influence? In going to and from work, men have a right to as free a passage without obstruction as the streets afford, consistent with the right of others to enjoy the same privilege. We are a social people and the accosting by one of another in an inoffensive way and an offer by one to communicate and discuss information with a view to influencing the other's action are not regarded as aggression or a violation of that other's rights. If, however, the offer is declined, as it may rightfully be, then persistence, importunity, following and dogging become unjustifiable annoyance and obstruction which is likely soon to savor of intimidation. From all of this the person sought to be influenced has a right to be free and his employer has a right to have him free. The nearer this importunate intercepting of employees or would-be employees is to the place of business, the greater the obstruction and interference with the business and especially with the property right of access of the employer. Attempted discussion and argument of this kind in such proximity is certain to attract attention and congregation of the curious, or, it may be, interested bystanders, and thus to increase the obstruction as well as the aspect of intimidation which the situation quickly assumes. * * * The elements essential to sustain actions for persuading employees to leave an employer are first, the malice or absence of lawful excuse, and, second, the actual injury."

Applying these principles to the facts of the case, it was held that the posting of three or four groups of pickets, each group composed of from 4 to 12 men, who were members of the various unions involved, in the street through which the employees of the

plant against which the strike was declared had to pass to and from work, so that the passage of employees was in effect running the gauntlet, in itself was intimidation and inconsistent with peaceable persuasion, especially where assaults and violence between the strikers and the employees ensued, but that the injunction granted by the lower court, so far as it forbade ex-employees of the company from inducing by persuasion employees or would-be employees to leave the employment, was contrary to the Clayton Act, and it was directed that it be modified by striking therefrom the word "persuasion."

The court, however, does not condemn all picketing, but limits it as to the numbers engaged in it, and forbids all abusive, libelous or threatening communications, arguments and appeals, and declares that the test that should guide the courts in the exercise of their discretion is whether what is done or said will result in intimidation. The Chief Justice says:

"We think that the strikers and their sympathizers engaged in the economic struggle should be limited to one representative for each point of ingress and egress in the plant or place of business and that all others be enjoined from congregating or loitering at the plant or in the neighboring streets by which access is had to the plant, that such representatives should have the right of observation, communication and persuasion, but with special admonition that their communication, arguments and appeals shall not be abusive, libelous or threatening, and that they shall not approach individuals together but singly, and shall not in their single efforts at communication or persuasion obstruct an unwilling listener by importunate following or dogging his steps. This is not laid down as a rigid rule, but only as one which should apply to this case under the circumstances disclosed by the evidence and which may be varied in other cases. It becomes a question for the judgment of the chancellor who has heard the witnesses, familiarized himself with the locus in quo and observed the tendencies to disturbance and conflict. The purpose should be to prevent the inevitable intimidation of the presence of groups of pickets, but to allow missionaries."

The Clayton Act, as Chief Justice Taft says, introduces no new principle into the equity jurisprudence of the courts. "It is merely declaratory of what was the best practice always." The cases in the state courts sustain this assertion. There is almost

universal agreement that peaceful persuasion is permissible. The only disagreement is as to where and under what circumstances such persuasion may be used. In two states, Illinois and Michigan, it has been held that peaceful picketing without threats or intimidation is an unwarrantable interference with the rights of the employer and entitles him to an injunction. *Barnes & Co. v. Chicago Typographical Union*, 232 Ill. 424; *Clarage v. Suphringer* (Mich.), 168 N. W. 440. But much the greater weight of authority supports the rule that picketing, where unaccompanied by intimidation or violence and where it infringes no property right, is permissible and cannot be enjoined. As the question is one that is peculiarly dependent upon the facts in each particular case, the following digest of the latest decisions upon the subject will convey a clearer conception, than can any statement of general rules, as to just where the courts have drawn the line between lawful and unlawful picketing.

Peaceable Picketing Accompanied by Persuasion—Vigor of Speech.—Striking laboring men have as much right to picket as to strike, but cannot resort to violence; “picketing” simply meaning standing along the highways of approach, or near the entrances to the employer’s plant, in time of strike, to observe who is working and to attempt to persuade him to quit.

Strikers may employ persuasion and peaceable means to keep nonunion men from taking their places, and the fact that the employer is irreparably damaged as an incident of the picketing, and has no adequate remedy at law, does not deprive the strikers of the right to picket, providing there is no malice and no violence.

Picketing strikers, in view of the circumstances, are not limited in their attempts to persuade other persons not to work for the employer to the use of placid language, but may talk in their own language, though plain and strong.

The mere use of the word “Scab” by picketing strikers did not constitute such violence or disorder as to call for injunction against the strikers exercising their right to picket—“scab” merely meaning a workingman who works for lower wages than or under conditions contrary to those prescribed by a trade union; also one who takes the place of a workingman on a strike.

Injunctions against striking workingmen can issue only to restrain lawlessness likely to cause irreparable damage; strained

construction of words employed by strikers not being enough, surmise and suspicion not sufficient, and unusual vigor of speech among the strikers or groups of assembled laborers not justifying the writ. *Walter A. Wood Mowing & Reaping Mach. Co. v. Toohey*, 114 Misc. Rep. 185, 186 N. Y. Supp. 95.

Peaceable Picketing—Damnum Absque Injuria.—Where a retail shoe store owner signed an agreement with a Clerks' Union, but broke the contract, a strike by the Clerks' Union was legally justified, and it, its members, and a central labor council had a legal right to notify union members that the storekeeper was unfair to organized labor, that being done by pickets in a peaceful and lawful manner, and damage to the storekeeper was *damnum absque injuria*. *Greenfield v. Central Labor Council of Portland and Vicinity (Ore.)*, 192 Pac. 783.

Picketing Accompanied by Social Pressure and Threats.—Maintaining a patrol of two men changed every hour in front of a person's premises, as part of a conspiracy to interfere with his business until he shall adopt a certain schedule of prices, in combination with persuasion, social pressure, and threats of personal injury or unlawful harm conveyed to persons employed by him or seeking such employment, amounts to intimidation, and constitutes a private nuisance which equity will restrain by injunction; and such injunction will issue, although the acts enjoined may be criminal, and are designed only to affect persons who are not bound by contract to enter into or to continue in the employment. *Field, C. J., & Holmes, J.*, dissenting from an injunction against (1) the patrol dissociated from threats of physical injury to person or property, and (2) any combined attempt to injure the business, although without such threats and irrespective of the means employed. *Vegelahn v. Guntner*, 167 Mass. 92.

Large Number of Pickets Calling Out Various Epithets.—Maintenance by a union of machinists on strike of relays of pickets from 25 to 75 in number patrolling the streets in the vicinity of the manufacturer's plant and at its main entrance, calling out various epithets, though insufficient to frighten or coerce other employees, was unjustifiable and subject to injunction. *United Shoe Machinery Corporation v. Fitzgerald (Mass.)*, 130 N. E. 86.

Picketing Accompanied by Intimidation and Violence.—Strik-

ing employees and persons and unions acting in sympathy with them, who picketed the plants of their employers, threw a snowball with a stone in it against the wind shield of a truck of one of the employers, and intimidated other employees by using unpleasant language to them, by throwing stones at them, and by jostling and crowding them as they went to and from their work, were guilty of illegal acts, subject to injunction. *Densten Hair Co. v. United Leather Workers International Union of America* (Mass.), 129 N. E. 450.

Picketing Accompanied by Intimidation and Persuasion to Boycott.—Despite St. 1913, c. 690, applicable only to a lawful strike lawfully conducted, employers, as against members of a labor union attempting to coerce the making of an agreement infringing the primary right to hire workmen in the labor market, are entitled to injunction against picketing, or intimidation of employees by the use of scurrilous language and abusive epithets, and the endeavor by mail to persuade customers to boycott the employers. *Folsom Engraving Co. v. McNeil* (Mass.), 126 N. E. 479.

Picketing Interfering with Business.—Picketing pursuant to a strike, while lawful, if peaceably conducted, will not be permitted when its purpose is to effect an interference with the business of employers, as to compel them to accept a contract with unions prohibiting the discharge of any employee except with approval of a board of arbitrators, providing that no factory shall operate for more than five days a week, irrespective of trade conditions, etc. *Jaeckel v. Kaufman*, 187 N. Y. Supp. 889.

Where a master abandoned a department of his establishment, and his employees struck, picketed, and interfered with his business, to compel the continuance of such department, the master was entitled to an injunction, where the injuries were such that the remedy at law would not be adequate. *Welinsky v. Hillman*, 185 N. Y. Supp. 257.

Picketing and Boycott to Force Employer to Unionize.—The acts of a labor union which seeks to force an employer to unionize his restaurant by means of picketing and boycott amount to “intimidation” and “coercion,” and are unlawful and subject to injunctive relief, even though no open threat or violence are proven.

The constitutional right of an individual to trade where he pleases does not confer upon a labor union of which he is a member the right to picket and boycott as an organization. *Webb v. Cooks' Waiters' and Waitresses' Union* (Tex. Civ. App.), 205 S. W. 465.

Where the proprietor of a nonunion bakeshop refused to unionize the shop at the request of a bakers' union, and to coerce him into doing so the union marched men up and down the sidewalk in front of his shop three times a week for a number of months, interviewed intending customers on the sidewalk, advised them not to purchase bread from the shop, and caused the marchers to spit on the sidewalk or make faces at the employees in the shop, the union and its members and agents would be enjoined from congregating in front of the shop, from marching up and down, and from blocking the entrance to the shop, from interfering with customers entering or departing, and from interfering with employees in any manner, since the acts as a whole were sufficient to call for equitable relief; criminal prosecution being inadequate. *Heitkamper v. Hoffman* (99 Misc. Rep. 543), 164 N. Y. Supp. 533.

The court said:

"No just complaint can be made by the plaintiff against the union's circularizing the neighborhood, asking the friends of union labor not to patronize this plaintiff, nor can the plaintiff seek to restrain the union, its members, or agents from peaceably persuading proposed patrons of the plaintiff from trading in his shop. The doing of those things will not be restrained."

Where a local union of jewelry workers, on failure of employers to reply to a circular relative to recognition of the union, met and called a strike, notifying the central labor council, which placed the employers on the unfair list, and pickets were at once stationed about the places of business of two, there was a "conspiracy," a combination of two or more persons by concerted action to do an unlawful thing or a lawful thing in an unlawful manner. *Heitkemper v. Central Labor Council of Portland and Vicinity* (Ore.), 192 Pac. 765.

The court said:

"Distinguished counsel have not cited, and after diligent search

we have not found, any authority which would justify or sustain picketing, even though it be peaceable, where the controversy is not between employer and employee, and there is no dispute growing out of employment, but the purpose of the picketing is to induce the employer to recognize the union. As we analyze the authorities, the legal right peacefully to picket is largely dependent upon the purpose and intent, and the method and manner in which the picketing is done."

Picketing and Intimidation by Union Where All Employees Refused to Strike.—Where plaintiff, the proprietor of a restaurant, refused to unionize it, and an agent of defendant union threatened and attempted a strike of plaintiff's employees, who refused to strike and united in an affidavit that they did not wish to strike and were entirely satisfied with wages and conditions of work, plaintiff might enjoin the union from picketing in front of its premises, with its concomitants of threats and intimidation of plaintiff's employees and annoyance to its customers, on the ground that the picketing was a malicious and unlawful act. *Stuyvesant Lunch & Bakery Corporation v. Reiner* (110 Misc. Rep. 357), 181 N. Y. Supp. 212.

The court said:

"The facts established in this action come peculiarly within the condemnation of law. The defendants had no grievance against plaintiff, other than that it and its employees were not in accord with their views about unionizing the plaintiff's business. It is no answer to say that picketing has been held to be lawful, if peaceably conducted. But picketing, even though ostensibly peaceable, may not be employed, when its purpose is in effect a malicious and wanton interference with another's business or vocation. *National Protective Ass'n v. Cumming*, 170 N. Y. 321, 63 N. E. 369, 58 L. R. A. 136, 88 Am. St. Rep. 648; *Bossert v. Dhuy*, 221 N. Y. 342, 355, 117 N. E. 582, Ann. Cas. 1918D, 661. As a matter of fact, there is no strike here at all. The picketing is therefore a malicious act, and unlawful."

Picketing Theater and Requesting Public Not to Patronize It.—The act of a motion picture machine operator's union in picketing a motion picture theater and requesting the public not to patronize it, in order to force the owner to desist from personally operating his own machine, although not accompanied by threats

or violence, held a nuisance, working irreparable injury to the owner's business, and subject to be enjoined. *Hughes v. Kansas City Motion Picture Operators* (Missouri), 221 S. W. 95.

The court said:

"Defendants contend the picketing was peaceable, and therefore lawful, and that to prevent it by the writ of injunction will deprive them of their privilege of free speech and the use of the public streets. Without denying that there can be peaceable picketing, as some courts have held, we dissent from the proposition that picketing is lawful, as a matter of course, simply because it is not accompanied by assaults, threats, or other methods of intimidation. In some instances we consider peaceable picketing is lawful. For example, where in the prosecution of a strike pickets are posted to observe and report what takes place on the employer's premises, and in the course of their task use neither violence nor threats toward other employees. *W. & A. Fletcher Co. v. Ass'n of Machinists* (N. J. Ch.), 55 Atl. 1077; *Karges Furniture Co. v. Wood-workers Union*, 165 Ind. 421, 75 N. E. 877, 2 L. R. A. (N. S.) 788; 6 Ann. Cas. 829. It has been held, but not by all courts, to be lawful in such instances, when nothing more is done by the pickets than to endeavor by argument and persuasion, to prevent other workmen from taking service under the employer against whom the strike is directed. *St. Louis v. Gloner*, 210 Mo. 502, 109 S. W. 30, 124 Am. St. Rep. 750; *Standard Tube, etc., Co. v. International Union*, 9 Ohio Dec. 692; *Ricard, etc., Co. v. Benner*, 14 Ohio Dec. (N. P.) 357; *Iron Moulders' Union v. Allis-Chalmers Co.*, 166 Fed. 45, 91 C. C. A. 631, 20 L. R. A. (N. S.) 315."

In a suit to enjoin defendant labor union in furtherance of a boycott of plaintiff's theater from picketing the same with men carrying banners, stating that plaintiff was unfair to organize labor, and with others, who attempted to dissuade patrons from entering, held that the findings below were insufficient to show that defendant's acts constituted a nuisance within Rev. Codes, sec. 6162, declaring that a nuisance must be either injurious to health, indecent or offensive to the senses, obstructive to the free use of property, or an unlawful obstruction of the free passage or use of streets, etc. *Empire Theater Co. v. Cloke* (Montana), 163 Pac. Rep. 107.

Interfering with Café or Restaurant Business—Placards.—The legality of an inscription on a picketing placard and the right

to display such placard does not give the right to make any willful use of it, as one cannot so use his own as to inflict unnecessary injury upon another, the maxim "*Sic utere tuo ut alienum non laedas*" applying.

Conduct of pickets employed by a labor union, if not intended merely to give public notice that plaintiff's picketed cafés were unfair to union labor, and which in effect threatened, and which reached, persons not interested in the controversy, and deterred their patronage, was unlawful.

Where picketing in a street fronting plaintiff's cafés required persons to choose between defying pickets and acceding to their appeal and necessarily interfered with the café business, a decree, enjoining picketing at and near the premises, was proper. *Local Union No. 313, Hotel and Restaurant Employees' International Alliance v. Stathakis* (Ark.), 205 S. W. 450.

The court said:

"Early cases upholding the right of picketing likened that action to the exercise of the right of free speech. This was upon the theory that as a striker might tell an individual citizen his grievance and thereby appeal to him for support in his strike, so he might employ any lawful and proper means which gave the greatest effect to that right, and that he might therefore inscribe his grievances upon placards to be seen at a distance and to be read by many at the same time, provided the inscription was not libelous or otherwise unlawful. The existence of this right is still generally conceded, and we think such right exists. But it appears in the history of this movement as reflected in the opinions of the courts on the subject that there has been an extension of the rights claimed by the labor unions in this respect, and the differences which appear in the decisions of the courts largely arise out of contrariety of view as to when the assertion of this right by the labor union to give notice of its grievances becomes an infringement on the rights of others by coercing those others into compliance with the demands of organized labor, for, as has been stated, the cases all agree in holding that any conduct on the part of the pickets which amounts to coercion is unlawful and will be enjoined."

The owner of a restaurant, who employed union labor, refused to discharge a cook because the latter was in arrears to the union, whereupon the union called a strike and began to picket his premises with signs announcing that he was unfair to union labor.

The picketing was carried to such an extent that at times the entrance to the restaurant was so jammed that prospective patrons could neither enter nor leave it, and the patronage fell off to about one-fourth of its past volume. Held, that while the mere stationing of persons near the premises of another, for the purpose of conveying information to persons seeking or willing to receive the same, or for the purpose of persuading persons by peaceful and orderly persuasion, does not in itself constitute an intimidation, yet, as the union was attempting to make the restaurant proprietor a collector of dues, and the purpose of its pickets could be no other than intimidation and coercion, such picketing of the premises will be enjoined. *St. Germain v. Bakery and Confectionary Workers Union* (Wash.), 166 Pac. 665.

The acts of a labor union of cooks, waiters, and waitresses, and its members, when restaurant proprietors refused to renew their contract with the union for another year, in calling a strike at the restaurant and picketing it with sandwich signs, and in urging customers not to patronize the place as unfair to union labor, were an attack upon the rights of men engaged in a lawful business, with an utter disregard of those rights, and were in absolute contempt of the law as declared in Texas. *Cooks', Waiters' and Waitresses' Local Union v. Papageorge* (Tex. Civ. App.), 230 S. W. 1086.

Where labor unions and their members called a strike at plaintiffs' restaurants, and picketed in front thereof, calling out in a loud voice, "Strike on at Grimes' Lunch; unfair to organized labor; this restaurant on strike," which largely reduced the patronage of the restaurants, the picketers endeavoring not only to prevent members of organized labor, but others, from patronizing the restaurants, and their real intention being to win the strike regardless of the effect on plaintiffs' business, the court was justified in issuing an injunction to restrain unreasonable interference with the lawful business of plaintiffs. *Grimes v. Durnin* (N. H.), 114 Atl. 273.

A motion by a restaurant keeper to continue an injunction pendente lite against a waiters' union will be granted, where it appeared that plaintiff insisted on an open shop, and defendants wanted it unionized, and also wanted to maintain on plaintiff's premises a shop representative, and that picketing had been in-

stituted by defendants, accompanied by acts of violence and intimidation of nonunion employees and patrons. *Pré Catelan, Inc. v. International Federation of Workers*, 114 Misc. Rep. 662, 188 N. Y. Supp. 29.

Picketing Near Place of Business for a Purpose Not Connected with It.—In suit for injunction against a union and its members, who were striking employees of complainant, placing of pickets near respondent's place of business for a purpose not at all connected with the business, and not for purpose of intimidating employees of complainant, so as to coerce them to quit, nor for the purpose of intimidating persons intending to become employees so as to prevent them from doing so, could not be enjoined, since such an act would not be wrongful as against the respondent, and would not be calculated to injure the respondent's business. *Southern California Iron & Steel Co. v. Amalgamated Ass'n of Iron, S. & T. W.* (Cal.), 200 Pac. 1.

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